

FILED
JAMES BONINI
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

04 MAY 18 PM 2:33

Mark R. Hoop, et al.,

Plaintiffs,

v.

Jeffrey W. Hoop, et al.,

Defendants.

Civil Action No. C-1-00-869

District Judge Susan J. Dlott

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR
LEAVE TO FILE A LATE REPLY**

Defendants have moved the Court for leave to file a late reply to Plaintiffs' Memorandum in Opposition to Defendants' Motion for Costs, Expenses, Attorneys Fees, and Exemplary Damages. Plaintiffs' memorandum in opposition to that motion was served on Defendants' counsel by mail on March 15, 2004. Accordingly, Defendants' reply was due on March 29, 2004, a full six weeks before Defendants filed their motion for leave to file a late reply.

This is not the first request by Defendants for leave to file a reply beyond the time limit specified in Local Rule 7.2(a)(2). Defendants also requested leave to file a late reply to Plaintiffs' renewed motion for JMOL. The Court granted that motion before Plaintiffs had an opportunity to respond, and despite the absence in Defendants' accompanying memorandum of any reason whatsoever as to why that reply could not have been timely filed, and despite the absence in Defendants' accompanying memorandum of any reason why Defendants would have

been prejudiced by the overruling of their motion. Defendants also filed a motion for leave to file a late reply to Plaintiffs' Memorandum in Opposition to Defendants' Contempt Motion, again without Defendants offering any reason whatsoever as to why that reply could not have been timely filed, and without any reason as to why Defendants would have been prejudiced by the overruling of their motion.

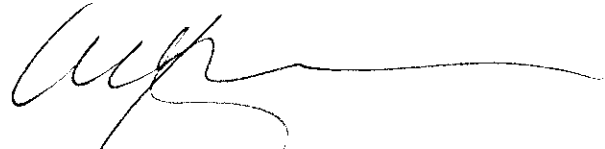
The present motion is but another request by Defendants to be absolved of the obligation to follow this Court's rule relating to the times for responding to motions and memoranda. That rule is clear, unambiguous, and obviously intended for the timely and expeditious resolution of contested matters that are raised by motion. Defendants' new and additional motion for leave to file a reply beyond the time set by the local rules is another step in what appears to be an evolving pattern of a disregard by Defendants of this Court's rules. And what makes this request by Defendants so striking and so egregious is the utter absence, again, in Defendants' filing of any valid reason why Defendants could not have filed their reply by the rule-prescribed due date of March 29, 2004 (the date that is 11 days from the service date of Plaintiffs' memorandum in opposition, plus three additional days because of the use of mail service by Plaintiffs). Defendants offer no excuse for their tardy attempt to buttress their original motion at this late date with additional factual allegations that are not supported by affidavit, nor by any other vehicle that would give those additional allegations any probative weight. For Defendants to delay an attempt to file a reply until six weeks after the due date prescribed by this Court's local rules, and not to offer any explanation whatsoever justifying late submission of their proposed reply, is to flaunt and to trivialize this Court's rules of practice.

Finally, Defendants original motion for costs, expenses, attorneys fees, and exemplary damages is premature in that there has been no ruling on Plaintiffs' renewed JMOL motion, which therefore renders Defendants' requested relief moot at this juncture.

CONCLUSION

No valid reason has been given by Defendants as to why their reply could not have been timely filed, nor have Defendants asserted any prejudice should their motion for leave be denied. Their motion for leave should accordingly be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alfred J. Mangels', with a long horizontal flourish extending to the right.

Alfred J. Mangels (0015981)
4729 Cornell Road
Cincinnati, Ohio 45241
Tel.: (513) 469-0470
Trial Attorney for Plaintiffs

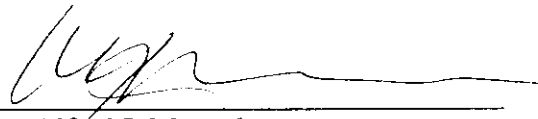
Of Counsel:
Timothy A. Magee, Esq.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE A LATE REPLY was served upon counsel for Defendants this 18th day of May 2004, by facsimile transmission to facsimile number 606-598-7496, and by mailing a copy of the same by first-class mail, postage prepaid, in an envelope addressed as follows:

Stella B. House, Esq.
STELLA B. HOUSE, ATTORNEY-AT-LAW, P.S.C.
Post Office Box 422
Manchester, Kentucky 40962-0422

May 18, 2004
Date


Alfred J. Mangels
Trial Attorney for Plaintiffs